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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,723	09/27/2001	Erwin Berthold	21 - 0506	2821

7590 10/23/2003

Kaardal & Associates, PC  
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3500 South First Ave. Circle - Suite 250  
Sioux Falls, SD 57105-5802

EXAMINER

BALSIS, SHAY L.

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 10/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

42-5

<b>Office Action Summary</b>	<b>Application No.</b> 09/965,723	<b>Applicant(s)</b> BERTHOLD ET AL.	
	<b>Examiner</b> Shay L Balsis	<b>Art Unit</b> 1744	

-- **Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 7-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7 and 19 is/are allowed.
- 6) ☒ Claim(s) 8-15, 17 and 18 is/are rejected.
- 7) ☒ Claim(s) 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
    If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

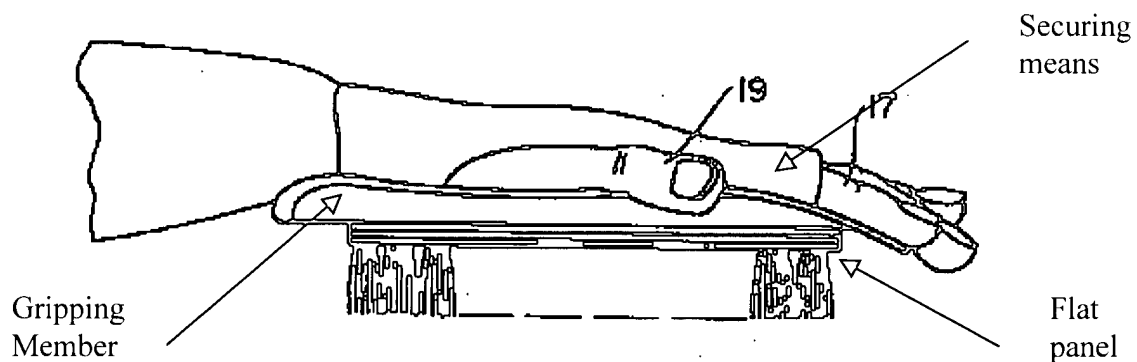
- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
    a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
        1. ☐ Certified copies of the priority documents have been received.  
        2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
        3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
    \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
    a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

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bristles attached to and extending away from the bottom surface. There is a gripping member that is engagable to the flat panel of the brush and is adapted for being placed in the palm of a user. A securing means is coupled to the gripping member for securing the gripping member to the hand of a user. The gripping member comprises a flat bottom wall adapted for abutting the top surface of the flat panel and an arcuate upper wall coupled to the perimeter edge of the flat bottom wall. The securing means comprises a strap having a first end attached to a first edge of the gripping member and the second end is attached to a second edge of the gripping member. The strap comprises a resiliently stretchable material. See figure below.



4. Claims 8-9 and 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Wiest (USPN 2795808).

Wiest teaches a brush comprising a rigid flat panel (15) having a top surface, a bottom surface, and a peripheral edge extending between the top and bottom surfaces. There is a plurality of bristles attached to and extending away from the bottom surface. There is a gripping member (18) that is engagable to the flat panel of the brush and is adapted for being placed in the palm of a user. A securing means (21) is coupled to the gripping member for securing the gripping member to the hand of a user. The gripping member comprises a flat bottom wall

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adapted for abutting the top surface of the flat panel and an arcuate upper wall coupled to the perimeter edge of the flat bottom wall. The securing means comprises a strap having a first end attached to a first edge of the gripping member and the second end is attached to a second edge of the gripping member. The strap comprises a resiliently stretchable material.

***Applicant Arguments***

5. The combination of Kilburn's gripping member with the brush of Bean would limit the operation of Bean's invention.

***Response to Arguments***

6. Applicant's arguments, see page 13, filed 9/8/03, with respect to Bean in view of Kilburn have been fully considered and are persuasive. The rejection of claim 7 has been withdrawn.

***Allowable Subject Matter***

7. Claims 7 and 19 are allowed.

8. Claim 16 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shay L Balsis whose telephone number is 703-305-7275. The examiner can normally be reached on 7:30-5:00 M-Th, alternating F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 703-308-2920. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.

Slb  
10/9/03

*Robert J. Warden, Jr.*

**Notice of References Cited**

Application/Control No.

09/965,723

Applicant(s)/Patent Under  
Reexamination  
BERTHOLD ET AL.

Examiner

Shay L Balsis

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**U.S. PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-2,795,808	06-1957	Wiest, Waldo	15/227
	B	US-			
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

**FOREIGN PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

**NON-PATENT DOCUMENTS**

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)  
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.